

REQUEST FOR PROPOSAL

NUMBER - 10-08

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

Pursuant to § 4.12.040 M.C.L., this solicitation document serves as the written determination of the Purchasing Agent, that the use of competitive sealed bidding is neither practicable nor advantageous to the Metropolitan Government.

Therefore, this solicitation will facilitate the entering into of contract(s) by the competitive sealed proposals process.

RFP Title: VISION GROUP BENEFITS



***Procurement Staff Contact:
Ken Hackett CPPB
Contract Specialist***

This proposal solicitation document is prepared in a Microsoft Word (Office for Windows) format. Any alterations to this document made by the proposer may be grounds for rejection of proposal, cancellation of any subsequent award, or any other legal remedies available to the Metropolitan Government.

NOTICE TO PROPOSERS

There may be one or more amendments to this proposal solicitation. If your company desires to receive copies or notices of any such amendments, you must provide the information requested below to Metro Purchasing. Please send this information to Jan Wiles via fax at (615) 862-6179 or by e-mail at jan.wiles@nashville.gov. **Metro will send amendments only to those firms which timely complete and return this form via fax or provide the requested information by timely e-mail.**

RFP number 10-08

Company name _____

Mailing address _____

Phone number _____

Fax number _____

Contact person _____

Email address _____

Send amendments by (check one): ☐ Email
 ☐ Fax

Emailed amendments will be sent in a Microsoft Word (Office for Windows) format. Any alterations to the document made by the proposer may be grounds for rejection of proposal, cancellation of any subsequent award, or any other legal remedies available to the Metropolitan Government.

Amendments also will be posted on the Metro Government Purchasing web site (<http://www.nashville.gov/bob/index.asp>) and attached to the solicitation listing as a PDF file. Check the Business Opportunities Bulletin web page for the particular proposal solicitation for any posted amendments.

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Request for Proposals
RFP Title:
10-08

All Proposals Submitted are Public Record after Award.
Submission of a proposal is an official waiver of confidentiality statements.

1) Introduction/Overview

A. Purpose

The Metropolitan Government of Nashville and Davidson County ("METRO") is requesting sealed proposals from qualified firms for the purchase of the following products and services. Vendors must be able to address and adhere to the following "short list" of requirements:

- Provide vision benefits to the specified employees.
- Competitive premiums commensurate with desired service requirements
- Employee satisfaction with offered plan
- Long-term cost guarantees
- Fixed retention costs
- Assistance with controlling future expenditures
- Assistance with communicating the benefit plan
- Reports and data required to administer the plan as requested by Metro

Proposers should note that employees who are not certificated and employed by Metro Nashville Public Schools (MNPS) are covered by the Metro Government plans. Therefore, for the purposes of this RFP, non certificated employees of MNPS will be included with Metro Government

B. Objective

The objective to be met through the award of the Request for Proposal is to enter into (a) Five (5) year contract(s) with the selected supplier(s) to achieve the Purpose listed above.

C. Scope of Services

Proposers should replicate the current plan design. Proposers should also provide the rate impact if Metro decides to allow for one set of frames and lenses every 12 months instead of 24 months (i.e., 12/12/12 instead of 12/24/24) and costs for increasing the allowance for frames to \$100.00.

Current Vision Plan-Metro Government

Following is a summary of Metro's current vision benefit program.

- Insurer
 - United Healthcare Vision
- Eligibility
 - Active employees: Must work at least 20 hours per week, however some crossing guards are eligible even though they work less than 20 hours per week
 - Pensioners: Must be receiving pension payments from Metro
 - Elected officials
- Eligibility Effective Date
 - Active employees: First of the month following 30 days after date-of-hire or after becoming an eligible employee
 - Pensioners: First day pension becomes effective and opportunity to enroll during Annual Enrollment period.
 - Elected officials: upon taking office
- Funding
 - Fully-Insured
- Contributions
 - Employees and pensioners are responsible for 100% of the cost of vision coverage. Employees may elect to have contributions deducted on a pre-tax or post-tax basis. Regardless of the tax basis elected, employees are not allowed to terminate, elect, or change plans during the plan year (except for annual enrollment) unless experiencing an eligible change in status event.

See next page for the beginning of the Benefits Summary

- **Summary of Benefits**

This table is a summary only. For more detail please refer to the available Plan summary.

Coverage	BASIC Vision Plan	
	In-network	Out-of-Network Reimbursement
Exam (one per year)	\$10 copay	\$45 maximum benefit per year
Eyeglass Lenses (every 24 months)	\$10 copay (waived if purchased with frames)	Benefit maximum between \$40-\$80 (varies by lens type)
Eyeglass Frames (every 24 months)	\$10 copay (\$130 retail allowance or \$50 wholesale allowance)	\$50 maximum benefit
Contact Lenses – in lieu of eyeglasses (every 24 months)	\$10 copay if medically necessary; \$125 maximum benefit if elective	\$125 maximum benefit: \$210 if medically necessary

Coverage	ENHANCED Vision Plan	
	In-network	Out-of-Network Reimbursement
Exam (one per year)	\$10 copay	\$45 maximum benefit per year
Eyeglass Lenses (every 12 months)	\$25 copay (waived if purchased with frames)	Benefit maximum between \$40-\$80 (varies by lens type)
Eyeglass Frames (every 12 months)	\$25 copay (\$130 retail allowance or \$50 wholesale allowance)	\$50 maximum benefit
Contact Lenses – in lieu of eyeglasses (every 12 months)	\$25 copay if medically necessary; \$125 maximum benefit if elective	\$125 maximum benefit; \$210 if medically necessary

Performance Guarantees

1. Purpose

Vendor agrees to meet specific levels of performance regarding customer service and reporting. Definitions, levels of performance, measurement of performance, and penalties are described herein.

2. Definitions

- a. **Timely Production of Management Reports** – The timely production of management reports is determined based upon actual receipt by Metro of each management report described in Section V.

- b. Membership Cards – The total number of accurate permanent membership cards mailed within 30 days of enrollment divided by the total number of new enrollees during a given time period.
- c. Telephone Response Time – Telephone response time is calculated by dividing the number of telephone calls answered within 30 seconds by all telephone calls received.
- d. Call Abandonment Rate – Call abandonment rate is calculated by dividing the number of telephone calls abandoned before the call is answered by all telephone calls received.
- e. Account Management – Metro shall be satisfied with the services and professionalism of the Vendor's account management team as reflected by a favorable score on the annual report card, based on a 5.0 scale. The annual report card shall be completed by the Metro Benefits Team and reflect the Carrier's performance for the entire term. The score will reflect the average of each Team member's evaluation.
- f. Satisfaction Surveys – Member satisfaction surveys shall be performed by Vendor on a statistically valid random sample of Metro members for health plans with over 100 enrolled employees. The survey instrument will be a standard Vendor survey and will be shared with Metro. Results will be based on the percentage of Metro members who are at least "satisfied" with Vendor performance. Penalties will be applied to the fees associated with the specific health plan which does not meet the appropriate satisfaction result.
- g. Claim Team Experience – At least 50% of claim paying staff that work on Metro's claims will have two or more years of experience with Vendor.
- h. Network Turnover – Health care provider turnover for the Vendor's network will be calculated using HEDIS methodology and reported at the end of the second quarter following the reporting year. Terminations due to death, retirement or relocation will not be included in determining turnover rate.
- i. Measurement Period – Shall be either:
 - i. The 12-month period beginning with the first day of January or
 - ii. The three-month period beginning with the first day of each calendar quarter.

3. Penalties and Measurement of Performance

Penalties

a. Timely Production of Management Reports

Level	Reduction in Quarterly Retention
Less than 85.0%, measured quarterly	5% plus 1% for each full percentage point below 85.0%

b. Membership Cards

Level of Performance Required	Reduction in Quarterly Retention
At least 99.9%, measured quarterly	5% plus 1% for each full percentage point below 99.9%

c. Timely Production of Membership Identification Cards

i. The following penalties apply to the initial enrollment period.

Level	Reduction in Annual Retention
Less than 99.9%, at time of initial enrollment	10% plus 1% for each full percentage point below 99.9%

ii. The following penalties apply to ongoing enrollments.

Level	Reduction in Quarterly Retention
Less than 99.9%, measured quarterly	5% plus 1% for each full percentage point below 99.9%

d. Telephone Response Time

Level	Reduction in Quarterly Retention
Less than 90.0%, measured quarterly	5% plus 1% for each full percentage point below 90.0%

e. Call Abandonment Rate

Level	Reduction in Quarterly Retention
Less than 5% measured quarterly	5% plus 1% for each full percentage point above 5.0%

f. Account Management

Level	Reduction in Annual Retention
Score of at least 3.5 on the annual report card, measured annually	5% plus 1% for each .25 point below 3.5 - Penalties will be assessed for each team member

g. Member Satisfaction Survey

Level	Reduction in Annual Retention
Less than 90%; measured quarterly	5% plus 1% for each full percentage point below 90%

h. Claim Team Experience

Level	Reduction in Annual Retention
At least 50% of claim paying staff have two plus years of experience with the carrier, measured annually	5% plus 1% for each full percentage point below 50%

i. Provider Network Turnover

Level	Reduction in Annual Retention
Less than 5%, measured annually	5% plus 1% for each full percentage point above 5%

- j. Any payment or penalty fees due Metro by vendor as a result of this agreement shall be submitted to Metro by the end of the Measurement Period (i.e., April 30th for the prior calendar year).
- k. Penalty fees are expressed as a percentage of the retention paid by Metro during the Measurement Period.

4. Measurement of Performance

- a. Vendor performance in each area described in Sections 3a, b, e, f, and g of this agreement shall be based on results specific to Metro. Vendor performance in each area described in Section 3c, d, and h of this agreement shall be based on the results for all of the vendors' accounts.
- b. Vendor performance in each area described in Sections 3e, f, g, and h shall be measured based on a 12-month measurement period. Vendor performance in each area described in Sections 3a, b, c, and d shall be measured based on a 3-month (i.e., quarterly) measurement period.

- c. Vendor agrees to provide a report to Metro reporting the performance in each area described in Section 3 of this agreement by the last day of the month following the last day of the Measurement Period.
- d. Metro reserves the right to conduct an independent review to measure vendor performance in each area described in Section 3 of this agreement. Vendor agrees to provide Metro or its appointees with access to files and such information required to measure vendor performance.

5. Contract Termination

- a. Should Metro terminate the services of vendor, vendor shall immediately (within two weeks of notification of Metro's intent to terminate vendor's services) establish a transition team consisting of:
 - i. Primary service representative
 - ii. Claim manager
- b. The transition team will meet with Metro and/or the successor organization as needed.
- c. Vendor agrees to provide paid claims history information (by tape) in specific format to the successor organization within two weeks prior to the new effective date.

Below are the reports required by Metro.

Report	Frequency
I. Paid Claims versus Paid Premium and Retention: <ul style="list-style-type: none"> a. Employee Only b. Family 	Monthly: By the fifteenth of the month following the reported month (e.g., by February 15 for January). Should show current month and plan year to date.
II. Utilization Analysis—Should be provided for in-network and out-of-network utilization on a separate and combined basis.	Annually: By the 45th day following the end of the plan year (e.g., February 15 th for the plan year ending on December 31 st).
III. Grievance—Number, type, and disposition of complaints filed with Department of Insurance	Annually: By the 45th day following the end of the plan year (e.g., February 15 th for the plan year ending on December 31 st).
IV. Enrollment/Membership Report—Enrollment should be broken out by using the same structure as seen in Report I.	Monthly: By the fifteenth of the month following the reported month (e.g., by February 15 for January). Should show current month and plan year to date.
V. Billing Report—Billing should be broken out by location and by tier structure. Employees must be listed by location, and then alphabetically by last name within each location.	Monthly: By the fifteenth of the month following the reported month (e.g., by February 15 for January). Should show current month and plan year to date.

D. Background

Metro Government has a two-tier enrollment system for all actives and pensioners who wish to enroll in the vision plan described above. The two tiers are as follows:

- Single
- Family

E. Inquiries

Direct questions related to this RFP to Ken Hackett CPPB, and submit such questions in writing by the close of business April 7, 2010. Include the RFP number, page, and paragraph number for each question.

If you mail the questions to the Division of Purchases, do not place the RFP number on the outside of the envelope containing questions, as it may be improperly identified as an envelope with a sealed proposal and may not be opened until after the official RFP due date.

Send all questions by fax or email to Ken Hackett CPPB at the Division of Purchases, by fax at (615) 862-6179 or via email at Ken.Hackett@nashville.gov. Offerors must clearly understand that the only official answer or position of the government will be the one stated in writing.

F. Method of Source Selection

Metro is using the Competitive Sealed Proposals method of source selection, as authorized by Section 4.12.040 of the Metropolitan Procurement Code, for this procurement.

Award(s), if made, will be made to the **Responsive** and **Responsible** Offeror(s) whose proposal is most advantageous to Metro, taking into consideration price and the other factors set forth in this Request for Proposal (RFP). Metro will not use any other factors or criteria in the evaluation of proposals received.

Metro may, as it deems necessary, conduct discussions with **Responsive** and **Responsible** Offeror(s) determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to solicitation requirements.

G. Pre-Proposal Conference

A Pre-Proposal Conference will be held.

If stated above that it will be held, it will occur on **April 9, 2010 at 1:00 PM** in the **Bill Whitson's Training Room**, located at room **601 on the 6th floor at 222, 3rd Avenue North, Nashville TN. 37201.**

Metro urges all prospective offerors to attend.

H. Minimum (general) criteria to be determined “Responsive”

- Does the proposal submitted conform in all material respects to the solicitation?
- Specific examples include: Were minority-owned and/or woman-owned business enterprises (MWBE) considered and contacted in a timely manner for this contract proposal (Good Faith Effort)? Was sufficient documentation provided with the proposal to demonstrate that Good Faith Efforts were made?

I. Minimum (general) criteria to be determined “Responsible”

- Does the Offeror demonstrate an understanding of Metro’s needs and proposed approach to the project?
- Does the Offeror possess the ability, capacity, skill, and financial resources to provide the service?
- Can the respondent take upon itself the responsibilities set forth in the RFP (and resultant contract) and produce the required outcomes timely?
- Does the Offeror have the character, integrity, reputation, judgment, experience, and efficiency required by the contract?
- Has the Offeror performed satisfactorily in previous contracts of similar size and scope; or, if the prime contractor has not performed a contract of similar size and scope, has it (and/or its team members) otherwise demonstrated its capability to perform the contract Metro seeks to establish through this RFP?
- Does the Offeror propose to perform the work at a fair and reasonable cost?

J. Projected Timetable

The following projected timetable should be used as a working guide for planning purposes. Metro reserves the right to adjust this timetable as required during the course of the RFP process.

<u>Event</u>	<u>Date</u>
RFP Issued	March 24, 2010
Deadline for submittal of questions	April 7, 2020
Pre-Proposal Conference	April 9, 2010
Amendment Issued for Pre-Proposal Conference	April 13, 2010
Proposals Due	April 26, 2010
Procurement Nondiscrimination Program Review	ASAP
Evaluation of Criteria Begins	ASAP
Complete Evaluation of Proposals (Short List)	ASAP
Complete Contract Negotiations/Execute Contract	ASAP

2) Constraints on the Contractor

Administrative Requirements

- The effective date for all benefits will be;
 - Metro Government-01/01/11
- Administering COB with other benefit plans

- Benefits (design and funding) must be specified herein.
- The Offeror must waive its standard “Actively at Work” provision on the effective date of coverage to the extent that an individual is not covered by the “Continuation of Benefits” clause of the current policy.
- The insurer will be responsible for developing and printing summary plan descriptions, policies, and premiums.
- The insurer will be responsible for HIPAA Administration under the Metro Government plans.
- No brokerage commissions or fees will be paid.
- All successful bidders will be required to provide sufficient communication materials to have a successful enrollment.
- A dedicated account service representative must be assigned to assist with implementation and ongoing service issues.
- Metro, its Employees, and agents will be indemnified and held harmless with respect to any and all claims, suits, actions, liabilities, and costs of any kind arising from the activities of the administrator as agreed under contract.
- Vendors must allow Metro to self-bill.
- To maintain Metro's high standards for services, each successful vendor will be required to attend annual vendor performance meetings.
- Each successful vendor will be required to support health fairs (wellness days) – 10 per year.
- A claim unit in one office must provide accurate, timely, cost-effective claim administration including:
 - Adjudicating all claims,
 - Administering COB with other benefit plans,
 - Toll-free claim office number,
 - Providing, processing, issuing, and distributing the claim checks/drafts and EOBs as required by the requested claim process,
 - Enrollment forms and eligibility change forms,
 - Claim forms,
 - ID cards (if applicable),
 - Administration manuals,
 - General legislative, compliance, etc., information and company releases, and
 - Summary plan descriptions and master policy/plan summary.
- If a new vision carrier is selected, initial eligibility for Metro Government will be provided immediately following annual enrollment scheduled for the fall 2010.
- Vendors must be able to accept eligibility and enrollment feeds from Metro's benefit system in the format specified by Metro.
- The Offeror shall maintain an electronic data processing (EDP) and electronic data interface (EDI) environment that supports the requirements of the RFP and meets the requirements of the Health Insurance Portability and Accountability Act of 1996. The Offeror must have a disaster recovery plan for restoring the application software and current master files and for hardware backup if the production systems are destroyed. The EDP environment (hardware and software), physician and data security and internal controls must meet the standards outlined by the American Institute of Certified Public Accountants.

- Physical security requirements shall at a minimum consist of a data storage vault with limited access to authorized personnel and a computer room having controlled access.
- Data security requirements shall at a minimum consist of fully operational internal accounting controls.
- Document control requirements shall at a minimum provide for automated security of all Metro documents and data to ensure complete segregation from the data and documents of other carrier customers.
- Offeror shall be held to all regulations and legislation adopted on the federal and state level that concern the processing of claims and appeals.
- The contractor will insure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

3) Functional Requirements

The only functional requirement of this procurement is to meet the stated Objective outlined in §1.A. and within the Scope identified in §1.C.

4) Contractor Personnel Requirements

The only contractor personnel requirement of this procurement is to meet the stated Personnel Requirements in §1.A, §1.C, and §2

5) Contractor Responsibilities

The only contractor personnel requirement of this procurement is to meet the stated Contractor Requirements in §1.A, §1.C, and §2

6) Metro Departmental Responsibilities

Metro shall provide to the Contractor proper documentation and access to applicable documents while performing the requirements of this proposed contract.

7) Metro's Right to Inspect

Metro shall have the right to inspect any facility or project site where the services performed under the resultant contract are performed.

8) Terms and Conditions of Contract

A contract resulting from this RFP shall be subject to the terms and conditions set forth in the attached Contract.

9) Procurement Nondiscrimination Program Requirements

- A. The consideration and contact of minority-owned and/or woman-owned business enterprises (MWBE) with a significant presence in the Nashville MSA is required for a *Responsive* offer**

Metro's Business Assistance Office (BAO) will provide a listing of known Metro registered and certified MWBE firms. You are encouraged to reach out and

develop additional MWBE firms for inclusion in your offer but they must be registered online with Metro prior to the proposal time and date. Certification is required by the time of the proposal due date.

B. The provision of the following items as part of the proposal package is a minimum requirement for a responsive proposal

Covenant of Nondiscrimination

Your firm has committed to the Covenant of Nondiscrimination when registering with Metro to do business. To review this document, go to Nashville.gov and visit the Procurement or Business Assistance web pages (it is NOT necessary to resubmit this with each proposal).

Statement of Interested, Notified, Bid Amount, and Successful MWBEs Selected.

Each proposer must provide the enclosed form indicating that the proposer has delivered written notice to at least three (3) available MWBEs if use of MWBEs is reasonable and if BAO can provide at least three MWBEs for the applicable category. The interested, notified, successful, and unsuccessful bid prices are one of the several required responses on the form.

Letter of Intent to Perform as a Subcontractor/Joint Venture.

In the event that a proposer submits the use subcontractors, suppliers, and/or joint ventures, a letter of intent signed by both the subcontractor/supplier/joint venturer must be submitted to Procurement by the end of the second business day following issuance of the intent to award letter.

Registration and Certification.

To be considered for the purpose of being Responsive, the subcontractor, supplier and/or joint venturer must be registered online with Metro by the proposal due date. Certification is required by the time of the proposal due date.

C. Assistance in Locating an Minority-Owned or Woman Owned Businesses

Proposers who desire assistance in locating potential MWBE subcontractors and suppliers are encouraged to contact John Irvin by email at John.Irvin@Nashville.gov or call John Irvin at (615) 862-5461.

10) Assistance to Small Businesses as Subcontractors and Suppliers

A. Incentive for Small Business Participation

Metro provides an incentive to Proposers to maximize the usage of small businesses in the performance of the contract. In the evaluation of proposals, Metro rewards Proposers for committing to use small businesses as subcontractors by considering the minimum percentage of total contract dollars of committed small business subcontractor participation. In addition, if the Proposer is a small business, Metro rewards the Proposer for the amount of work it commits to self perform.

B. Assistance in Locating Small Businesses

Proposers who desire assistance in locating potential small business subcontractors and suppliers are encouraged to contact John Irvin by email at John.Irvin@Nashville.gov or call John Irvin at (615) 862-5461.

C. Definition of Small Business

A “small business” means a United States business which is independently owned and operated and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field. In addition, in order to qualify as a small business for purposes of this RFP, a business must meet the standards set forth in Metro’s Small Business Standards included as an Attachment to this RFP.

D. Documentation Requirements

Proposer must complete the *List of Proposed Small Businesses* Exhibit to this RFP and submit the Exhibit with the Proposal to make a commitment to use subcontractors that claim small business status. Changes to the list of proposed small businesses must be submitted in writing and approved in advance by Metro. Proposer must confirm that any small businesses to be included in its proposal meet the small business standards set forth by Metro. Proposer shall likewise notify its proposed small businesses that Metro requires 1) that the subcontractor be registered to do business with Metro, and 2) have been approved as a small business through the submission to Metro of documentation to confirm small business status including a copy of their two most recently submitted business tax returns as well as IRS form 941-Employer's Quarterly federal tax return. This information will be reviewed by Metro and used to confirm the small business status. Small business status must be approved by Metro **prior** to proposal submission. ***While Metro commits to having documents reviewed and status granted as quickly as possible after the receipt of the necessary documentation, to be safe, documents should be submitted no later than four days before the bid/proposal is due to allow time for status to be granted.***

E. Progress Payments to the Contractor

As a condition of progress payments to the contractor, Metro will require that Contractor submit evidence of participation of and Contractor's payment to all small businesses participating in any resultant Contract. This evidence shall be submitted with each invoice and shall include copies of subcontracts, subcontractors' applications for payment, subcontractors' certified payrolls, and proof of payment to small business subcontractors; and purchase orders, Invoices, and proof of payment to small business suppliers.

F. Metro Remedies for Misrepresentation

If, during the course of the Contract, Contractor fails to maintain the level of small business participation committed to in the Contractor's Proposal, or if any material representation made in Contractor's proposal concerning the small business status of any Subcontractor or Contractor's involvement in the ownership, operation or management of any subcontractor claiming status as a small business is shown to be false. Metro may, at its sole option and in addition to any other remedies available under the Contract, at law or in equity, terminate the Contract. Further, in

the event that Metro terminates the contract, the Contractor shall pay Metro's full procurement costs, including, without limitation, any costs associated with procurement delays. Metro will institute debarment proceedings against any Proposer that misrepresents in a proposal any material fact concerning the small business status of itself or any subcontractor or Proposer's involvement in the ownership, operation, or management of any subcontractor claiming status as a small business. In addition, Metro may, at its sole discretion, assess a charge representing the cost of all audit and legal time and expense incurred by Metro as a result of the Contractor's failure to maintain the level of small business participation committed to in the Contractor's proposal.

11) Instructions for Proposal

A. Compliance with the RFP

Proposals must be in strict compliance with this Request for Proposals. Failure to comply with all provisions of the RFP may result in disqualification.

B. Acknowledgment of Insurance Requirements

By signing its proposal, Offeror acknowledges that it has read and understands the insurance requirements for the proposal. Offeror also understands that the evidence of required insurance must be submitted within fifteen (15) working days following notification of its offer being accepted; otherwise, Metro may rescind its acceptance of the Offeror's proposal. The insurance requirements are attached.

C. Delivery of Proposals

All proposals are to be delivered before **April 26, 2010 at 3:00 PM**, Nashville local time to:

IMPORTANT NOTICE:

Metro Purchasing (Procurement Division) is planning to move to Lindsley Hall April 16th, 2010. No Bids or RFPs will be received between April 15th and April 20th due to the move.

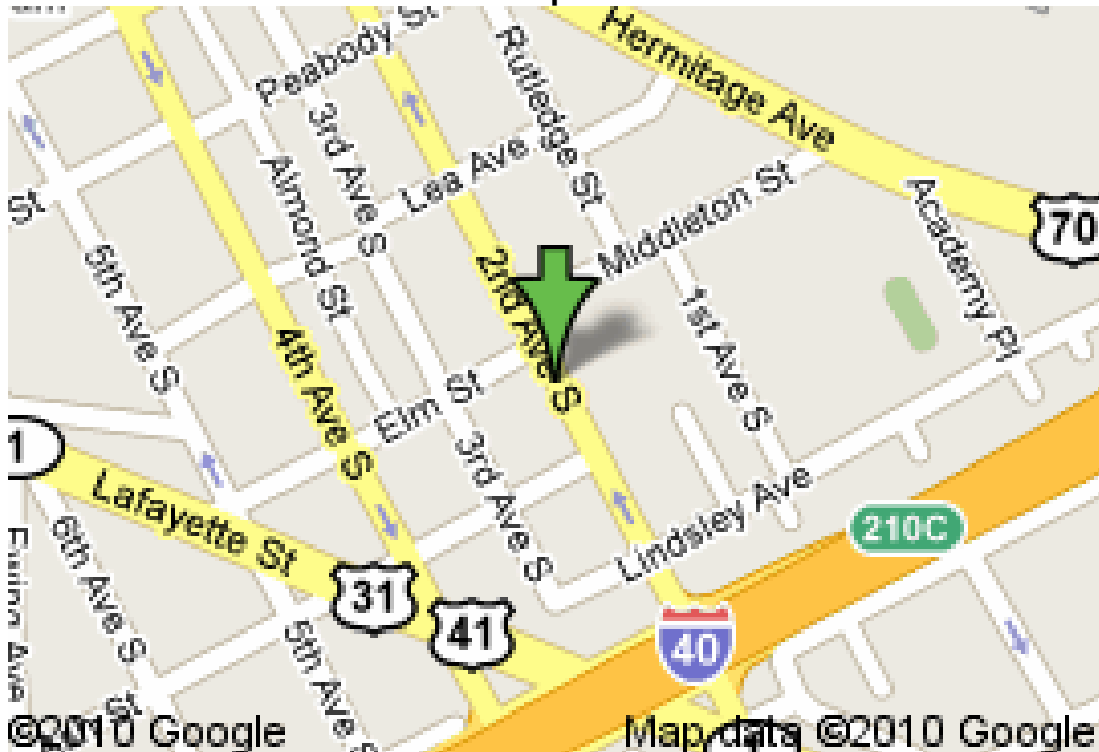
If you have your bid or RFP delivered before April 14, 2010 it should be sent to: Division of Purchases, 222 3rd Ave North, 6th Floor Nashville, TN 37201 as in the past.

If you personally deliver your bid or RFP, or send by UPS or FedEx after April 14, 2010 it should be hand delivered to:

Procurement Division, 1st Floor, Lindsley Hall, 730 2nd Avenue South, Nashville, TN 37210 . Lindsley Hall is the stone building behind the former County Clerk's Building at the Richard Fulton Complex.

If you mail your bid via the U S Mail and it will arrive after April 14, 2010, the Mailing Address is: Procurement Division P.O. Box 196300, Nashville, TN 37219-6300.

See Map Below



Metro WILL NOT accept any proposals received after 3:00 P.M. local time or delivered to a location other than what is listed above. Late or incorrectly delivered proposals will be returned to the Offeror at their expense or destroyed after 30 days.

Proposers must **submit one (1) original**, and **nine (9) exact duplicate, numbered copies** of the proposal response and **one (1) electronic copy** of the complete proposal response including any attachments, on a WINDOWS PC compatible CD.

Proposals will be opened publicly in a manner to avoid public disclosure of contents; however, only names of the Proposers will be read aloud.

List the Proposal Number on the outside of the box or envelope and note, "Request for Proposal enclosed".

D. Evaluation of Proposals (Procedure)

Metro will first examine proposals to eliminate those, which are clearly non-responsive to the stated requirements. Therefore, Offerors should exercise particular care in reviewing the Proposal Format required for this RFP.

The Office of Minority and Women Business Assistance (BAO) will work with proposers to ensure effort was made to satisfy the Procurement Nondiscrimination Program requirements. However, after limited engagement, if a firm fails to

demonstrate effort to achieve this requirement, the BAO will request of the Purchasing Agent that the proposal be determined non-responsive.

Proposers who are determined to be non-responsive and/or non-responsible will be notified of this determination. The remaining proposers will also be notified.

The evaluation committee will then score all responsive and responsible proposals based upon the evaluation criteria detailed herein. Upon completion of the initial scoring, the committee may recommend a single finalist or enter into a short-listing process with those offerors whose proposals are determined to be in the competitive range.

The detailed evaluation process that follows the initial scoring may result in, but not limited to, a series of requests of the offerors for clarifications, additional discussions, presentations, amended proposals, contract negotiations, best and final offers, and/or detailed reference checks. This process may involve multiple short-listing rounds for the purpose of achieving contracts that are in the best interests of Metro as determined by the evaluation committee.

The method used for scoring objective criteria (cost, small business participation, time of completion, etc.) shall be based on comparison of all responsive and responsible proposals.

Other criteria scores may be adjusted upward or downward during discussions. This movement will result from further detailed review of short listed proposals and consideration of additional information received through discussions and written submittals. However, the points will not exceed the total points available for that evaluation criterion.

If, during discussions, Metro discovers modification of requirements is necessary, the request will be amended. Subsequent scorings may be based on comparison of only the short listed proposers.

At any time during the evaluation process, it is determined that a proposal is non-responsive or non-responsible, that proposal will be removed from consideration for award and all proposers notified of this decision.

Metro reserves the right to contact any and all references to obtain, without limitation, information regarding the Offeror's performance on previous projects. A uniform sample of references will be checked for each short-listed offeror.

The Metro Purchasing Agent reserves the right to withdraw this RFP at any time and for any reason and to issue such clarifications, modifications, and/or amendments as it may deem appropriate.

Receipt of a proposal by the Metro Procurement Division or a submission of a proposal to the Metro Procurement Division offers no rights upon the Offeror nor

obligates the Metropolitan Government of Nashville-Davidson County in any manner.

The Purchasing Agent reserves the right to waive minor irregularities in proposals, provided that such action is in the best interest of Metro. Any such waiver shall not modify any remaining RFP requirements or excuse the Offeror from full compliance with the RFP specifications and other contract requirements if the Offeror is awarded the Contract.

In order to complete the evaluation process faster, list the name, address, phone number, fax number, and email address of the person capable of answering any questions that may arise during the evaluation process.

(Please Print or Type)

Company Name: _____

Attention: _____

Address: _____

City/ST/Zip: _____

Phone: _____

Fax: _____

Email: _____

E. Ambiguity, Conflict, or Other Errors in the RFP

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposal, it shall immediately notify the Metro Procurement Division such error in writing and request modification or clarification of the document. The Department of Purchasing will make modifications by issuing a written revision and will give written notice to all parties who have received this RFP from the Metro Procurement Division.

The Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal or it shall be waived.

F. Proposals and Presentation Costs

Metro will not be liable in any way for any costs incurred by any Offeror in the preparation of its proposal in response to this RFP, nor for the presentation of its proposal and/or participation in any discussions or negotiations.

G. Rejection of Proposals

The Purchasing Agent reserves the right to accept or reject in whole or in part, any or all proposals submitted. The Purchasing Agent shall reject the proposal of any Offeror that is determined to be non-responsive. The unreasonable failure of an Offeror to promptly supply information in connection with respect to responsibility may be grounds for a determination of non-responsibility.

H. Acceptance of Proposals

The Purchasing Agent shall accept all proposals that are submitted properly. However, the Purchasing Agent, or designee, reserves the right to request clarifications or corrections to proposals.

I. Requests for Clarification of Proposals

Requests by the Evaluation Committee for clarification of proposals shall be distributed by the Procurement Staff in writing (or email).

J. Validity of Proposals

All proposals shall be valid for a period of ninety (90) days from the opening date of the Request for Proposal.

12) Evaluation Criteria

A. Proposal Evaluation Committee

A committee appointed by the Metropolitan Government Purchasing Agent will evaluate proposals. Other agencies and consultants of the Government also may examine documents. The committee will make recommendation(s) to the Purchasing Agent to consider.

B. Response Format

The information listed below shall be submitted with each proposal and should be submitted in the order shown. Each section should be clearly labeled, with pages numbered and separated by tabs. Failure by an offeror to include all listed items may result in the rejection of its proposal.

C. Evaluation Criteria (Factors)

The factors to be considered in the evaluation of proposals are listed below. While Metro believes all these items to be of importance, their relative weight is indicated by the points each evaluation criteria could receive. Within each evaluation criteria, subsets of the criterion may be defined to clarify the point distribution for that evaluation criteria. Award(s) will be made to the responsible offeror whose proposal is determined to be the most advantageous to the Metropolitan Government of Nashville and Davidson County. No other factors or criteria will be used in the evaluation.

- **Tab I, Business Plan**

Total points available for this criterion are 45 points.

- Open with a cover letter indicating the underlying philosophy of your firm in providing the requested service/product. Express your understanding of the contract scope and the desired deliverables.

- **Questionnaire**

Please provide responses to the following questions:

Vision Care

The information contained in this questionnaire is important and will be used to evaluate your proposal. Be certain that all questions are answered completely and accurately. Include the questions in your response. If you are selected to insure Metro's vision benefit plan, your responses to the questions and the request for proposal will be considered part of your contractual responsibilities.

A. General

1. *Compliance.* Provide the following relative to your organization.
 - a. Does your firm agree to insure the current and/or proposed plan exactly as described? If not, note any variations and the reasons for them.
 - b. Does your firm agree to comply with the terms and conditions set forth by Metro included with this RFP document?
2. *Renewals.* What are your firm's procedures for renewal processing? Does your firm require any specific information from Metro for renewal purposes? Please explain.
3. *Account Service.*
 - a. From what location will routine services be handled? Please indicate the address of this office.
 - b. Would the Account Representative be able to attend on-site meetings if needed?
4. *Implementation Schedule.* Please provide an implementation schedule detailing specific activities, target dates, data requirements, and responsibilities for completion.
5. *Technology Interface.*
 - a. Is your system capable of receiving census data and billing/enrollment data from Metro's system?
 - b. Would your system be able to use Metro ID numbers to identify employees instead of using social security numbers?
 - c. Would you be able to offer a customized website with Metro's benefit specific information?

B. Financial Information

1. Is your proposal based on a fully-insured, fully-pooled funding arrangement?
2. How long will notice be given of any rate changes? (Metro requests ninety-days)
3. *Guarantee.* How long are the premium rates guaranteed? (Metro requests three years)
4. *Documents.* Only one document for Metro must make up the contract. This document must be available for a review 30 days after the contract award date.

C. Management Reports

1. *Sample Reports.* Provide examples of your standard reports.
2. *Report Cost.* Please confirm that all standard reports will be provided at no additional charge.
3. Can you provide reports/ data based on specific plans offered?

D. Claims Administration

1. *Claims Payment.* Please describe the claims payment process for employees. Describe this process for both network and non-network utilization as well as any specific payment cycles for out-of-pocket expenses.
2. *Claim Processing.* What is your corporate claim turnaround time goal? What is the typical claim turnaround time in the proposed claim office? These numbers should be calculated in business days from the time a claim is received in the office until the date payment is mailed.
3. *Claim Service.* From what location will claims be paid? Do you provide a toll-free number that employees may use for claim/network questions and assistance?
4. *EOBs.* Please furnish a sample of the explanation of benefits form your company will be using.
5. *Communication Materials.* Please furnish copies of communication materials your company typically uses (e.g., claim forms, enrollment cards, identification cards/vouchers, claim kits, etc.).

E. Trends and Plans

1. Do you offer a discount program for Lasik surgery and/or other vision corrective surgery? If so, please describe your program, including what benefit/coverage levels are available and any additional costs. Do you require use of a contracted/network facility, as a condition of the benefits for corrective laser surgery?
2. Would you recommend Metro offer only one plan option (the current Enhanced Plan)? What advantages/ disadvantages would result from only offering one plan option?
3. Metro is considering adding cosmetic options to our current plans. If Metro were to add a progressive lenses option, how would rates be impacted? What other cosmetic options would you advise Metro to add and how would each option impact rates? Please provide rates for both the current plan structure and if only one plan was offered.
4. Provide how you envision future trends and benefits.
5. Show how you will assist Metro in addressing these trends.
6. If you could develop a Vision plan for Metro what would it entail.

F. Provider Network

1. *Provider Directory.* Please include 2 provider directories for the city of Nashville.
2. *Internet Information.* Are directories available on the Internet? How often are they updated? Please provide the Internet address where directories may be accessed.
3. *Provider Network Match.* The table below indicates the number of Metro participants residing in each zip code range. For each zip code range, indicate how many of these employees are in the network that your organization is bidding in this section. Define the network area to be at least 2 optometrists and 1 ophthalmologist within 10 miles. A census has been provided to assist you in your response.

You may include a detailed match report (e.g. Geo Access) in your response to this RFP. However, please note that the following table must be completed based on the parameter above in order for your response to be considered.

go to their office? How are credentials verified? How often do you recredential providers?

6. *Member Services.*

- a. How do you service participant inquiries? Include a description of your staffing arrangements. Provide the name and phone number of the individual ultimately responsible for member services.
- b. What kind of participant inquiries do you anticipate and how would you respond?
- c. How do you log and track participant inquiries so that you respond quickly? Do you monitor volume, type, and resolution of participant inquiries?
- d. Provide the 2009 accessibility statistics and your target service levels for the member service unit that will service Metro's participants.

	2009	Target
• Average time on hold		
• Abandonment rate		
• Average talk time		

7. *Legal/Contract Issues*

- a. Are you willing to represent and warrant that:
 1. You have performed the appropriate and necessary due diligence review of the designated networks and are satisfied that your protocols and procedures are being and will be followed?
 2. All providers are required by contract to carry minimum amounts of professional liability insurance?
 3. You and the network carry professional liability and errors and omissions insurance?
 4. You and the designated network will remain in full compliance with all federal and state laws while providing services and benefits to Metro, to participants under Metro's vision plan including, but not limited to, those regarding provider reimbursement?
 5. Your and/or the designated network's provider contracts require all providers to (a) make their services available to Metro's vision plan based on all of the reimbursement methodologies identified in this RFP and your response including, but not limited to, capitation; and (b) provide notice no less than 60 days prior to termination of their provider contract.
 6. You will accept full responsibility for the performance of each subcontracted vendor which you may use to meet any of your obligations to provide services and products to Metro or its Plan and that such vendor will be held to the same standards and requirements to which you agree?
 7. You have performed the appropriate and necessary due diligence review of your administrative and operational capabilities to provide the services specified in this RFP.

- a. Are you willing to indemnify and hold Metro harmless for a failure by you, your network, or network providers to provide specifically identified managed care network and vision management services and benefits to participants under Metro's vision plan, or the negligent provision of such services?
- b. Are you willing to agree that Metro will have the right to audit all aspects of your performance by reviewing pertinent records or documentation and that you will cooperate with any such audit, subject to appropriate vision records confidentiality safeguards?

G. Additional Information

1. *Performance Guarantees.* Confirm your willingness to enter into performance guarantees. Describe in detail the specific performance guarantees you propose, including the proposed penalty. Section 3C outlines the types of performance guarantees desired by Metro.
2. *Additional Information.* If these specifications do not permit you to fully explain your capabilities, please add additional comments.

- **Tab II, Experience and Qualifications**

Total points available for this criterion are 10 points.

- Include the description of the proposed team, and the role to be played by each member of the proposed team
- What are the proposed team's organizational structure, interrelationships, and interactions?
- Include the résumés of all managers, senior level supervisors, and key personnel (indicate if they are a subcontractor) who will be involved in providing the required services.
- Address your firm's financial health to completely perform the contract. Identify any areas of concern or limitations that Metro should consider.
- Identify any areas of concern or limitations that Metro should consider.

- **Tab III, Compensation and Cost Data**

Total points available for this criterion are 30 points.

Financial data, which has been provided with this RFP, is provided upon which to base your quote. Additionally, a current census is available for Metro. Please contact Purchasing (see Section 1E) to have the census sent via e-mail. Proposed rates must be based upon the assumptions contained in the exhibits. Your organization may elect to complete additional exhibits based upon other assumptions, but must submit completed exhibits based upon the assumptions provided.

Metro requests the submission of vision proposals on an insured basis. The following table outlines the financial exhibits that need to be completed:

Pricing Current Plan Structure (Current plan will be used as the basis for evaluation.)

*					
Enrollment	1/1/11 – 12/31/11	1/1/12 – 12/31/12	1/1/13 – 12/31/13	1/1/14 – 12/31/14	1/1/15 – 12/31/15
Enrollment Assumptions*					
Single	2,147	2,147	2,147	2,147	2,147
Enhanced Single	2,891	2,891	2,891	2,891	2,891
Family	5,647	5,647	5,647	5,647	5,647
Enhanced Family	10,821	10,821	10,821	10,821	10,821
Monthly Premium Rates*					
Single	\$	\$	\$	\$	\$
Family	\$	\$	\$	\$	\$

*Includes actives, pensioners, and COBRA participants

Note as stated above Metro is considering adding cosmetic options to our current plans. If Metro were to add a progressive lenses option, how would rates be impacted? What other cosmetic options would you advise Metro to add and how would each option impact rates? Please provide rates for both the current plan structure and if only one plan was offered, progressive lens option, and any other cosmetic option you would recommend and the cost. Use a separate pricing form for all options.

Other Pricing Options _____

	1/1/11 – 12/31/11	1/1/12 – 12/31/12	1/1/13 – 12/31/13	1/1/14 – 12/31/14	1/1/15 – 12/31/15
Enrollment Assumptions*					
Single	2,147	2,147	2,147	2,147	2,147
Enhanced Single	2,891	2,891	2,891	2,891	2,891
Family	5,647	5,647	5,647	5,647	5,647
Enhanced Family	10,821	10,821	10,821	10,821	10,821
Monthly Premium Rates*					
Single	\$	\$	\$	\$	\$
Family	\$	\$	\$	\$	\$

- **Tab IV, Past performance and References**

Total points available for this criterion are 10 points.

- Provide a listing of ten (10) previous customers that purchased your services/product that were of similar size and scope. The services provided to

these clients should have characteristics as similar as possible to those requested in this RFP.

- Information provided for each client shall include the following:
 - a) Client name, address, email, and current telephone number
 - b) Description of services provided
 - c) Time period of the project or contract
 - d) Budgeted amount and final billing amount (explain any cost variance)

Failure to provide complete and accurate client information, as specified here, may result in the disqualification of your proposal and will be reflected in the scoring.

- **Tab V, Small Business Participation**

Total points available for this criterion are 5 points.

- The *List of Proposed Small Businesses* must be completed and signed by a company officer empowered to bind the Proposer to the provisions in this RFP and any contract awarded pursuant to the PRP. The Proposer must submit a *List of Proposed Small Businesses* OR a statement that no Small Businesses are proposed.
- The maximum points available for this criterion are listed above. However, the minimum requirement level is no more than 1 point granted for each 1% of total contract value for small business utilized.

Attachments A
Procurement Nondiscrimination Program Forms
Form Submission Procedures

Demonstrating compliance with the Procurement Nondiscrimination Program requires the submission of the following forms:

1. **Statement of Good Faith Efforts**- This completed form is required at the time of bid/proposal submission. Each of the first three listed statements must be initialed by an authorized company official indicating that the prime contractor has made all of the good faith efforts required by the Procurement Nondiscrimination Program. Prime contractors should initial any of the additional good faith efforts listed subsequently on the form as they are applicable.

This form must be signed by a principle of your company and dated.

2. **Statements of Interested, Notified, and Successful Subcontractors** – This completed form is required at the time of bid/proposal submission to provide Metro with information regarding your outreach efforts. The first section of this form should list those firms that have contacted you as well as those with whom you have made contact regarding potential participation on this project. The second section of this form should list the MWBE subcontractors with whom you have decided to work with on this project if awarded.

Submitted forms should be fully completed and specify the MWBE company names, individual(s) contacted, date contacted, M/WBE Certificate Type, percentage of total contract value to be awarded, a description of the work to be performed, and the UNSPS Code of the work. A copy of the codes can be provided upon request to the BAO.

NOTE: Reasons for declining offers made by potential MWBE partners must be noted on this form.

This form must be signed by a principle of your company and dated.

3. **Letter of Intent to Perform as a Subcontractor/Joint Venture**--This form is to be completed and submitted by the apparent successful participant **by the end of the second business day following notice of intent to award from Metro**. It should specify the names of the MWBEs with whom the prime contractor intends to subcontract or joint venture. Additionally it should detail the work to be performed, the total value of the MWBE participation on the contract in dollars and percentage and must be signed by both the MWBE subcontractor/joint venture partner AND the prime contractor and dated.

NOTE: A separate form must be completed for each individual MWBE subcontractor/joint venture partner.

Any additional questions regarding required detail and documentation to demonstrate Procurement Nondiscrimination Program compliance should be directed to the Business Assistance Office at 615-880-2814.

Attachment A (continued)
Good Faith Efforts

Subject: Proposal for _____
(Name of Project)

Pursuant to the requirements for Participants under the Procurement Non-Discrimination Program, and in consideration of the privilege to submit Proposals on contracts funded, in whole or in part, by the Metropolitan Government, I/We, attest that I/We have made the following efforts to ensure that potential MWBE subcontractors were notified of the opportunity to participate as a subcontractor or joint venturer on this project.

- _____ I/We have made efforts to include certified MWBE's in the procurement process and to ensure that businesses are not discriminated against on the basis of race, ethnicity or gender;
- _____ I/We have delivered appropriate written notice to three available certified MWBEs for each potential subcontracting or supply category in the Contract AND all potential subcontractors or vendors which requested information on the Contract.
- _____ I/We have provided all potential subcontractors or vendors with adequate information as to the plans and specifications of this project, information necessary to provide a bid or quote, relevant terms and conditions of any resultant contract and the last date and time for receipt of price quotations.

Additionally, _____ has made the following Good Faith Efforts to include MWBEs as subcontractors or joint venturers on this project.

- _____ I/We have attended a special meeting called to inform business and individuals of subcontracting or supply opportunities.
- _____ I/We have, in accordance with normal industry practices, divided the contract into economically feasible segments that can be performed by a MWBE.
- _____ I/We have provided a written explanation for rejection of any potential subcontractor or vendor to the BAO, included the name of the firm proposed to be awarded the subcontract or supply agreement, where price competitiveness is not the reason for rejection.
- _____ I/We have actively solicited, through sending letters or initiating personal contact, MWBEs in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration.
- _____ I/We have utilized the services of available community organizations and associations, contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting

and recruitment of MWBEs for the Metropolitan Government contract under consideration.

_____ I/We have advertised in publications of general circulation in the Nashville Metropolitan Statistical Area ("MSA"), trade publications and other media owned by, or otherwise focused or marketed to MWBEs, and the advertisement identifies and describes the specific subcontracting or other opportunity in reasonable detail.

_____ I/We have conducted discussions with interested MWBEs in good faith, and provided the same willingness to assist MWBEs as has been extended to any other similarly situated subcontractor.

_____ I/We have taken steps to ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain a non-discriminatory work environment, free of harassment, intimidation and coercion at all construction sites, offices and other facilities to which employees are assigned to work.

Printed Name of Company Official

Date

Signature

Title of Company Official

Fully Company Name

Mailing Address

Area Code/Phone Number

City, State, Zip

Please contact the Business Assistance Office (615) 880-2814 with any questions about information which may be required.



STATEMENTS OF INTERESTED, NOTIFIED AND SUCCESSFUL SUBCONTRACTORS

Please complete this form to provide Metro with information regarding your outreach efforts. Please include information appropriately regarding those certified MWBEs that you contacted, who contacted you and those that you have decided to work with on this project. Please add additional copies of this sheet as necessary so that you may list ALL MWBEs with whom you've had contact. Please contact the Business Assistance Office with any questions at 615-880-2814.

Project Name _____ **RFP/ITB Number** _____

As part of our regular and customary good faith efforts to include MWBE subcontractors, suppliers and joint venturers, _____ (Company Name) has contacted or was contacted by the following certified MWBEs related to our bid/proposal.

<i>Business Name & Contact</i>	<i>Phone No</i>	<i>MBE/WBE Certificate Type</i>	<i>Date of Contact</i>	<i>Method of Contact</i>	<i>Who Initiated Contact?</i>	<i>If Bid Submitted, Amount of Bid*</i>	<i>Offer Accepted or Declined</i>	<i>Reason(s) for Declining</i>

*STATEMENT OF BID/PRICE QUOTATION

Having submitted a Proposal/bid for the above referenced project, if awarded the contract, _____ (Company Name) advises that contingent upon award of the contract to our company, our subcontractor, suppliers, or joint venture partnership participation is projected to be as follows:

<i>Business Name & Contact</i>	<i>Phone No</i>	<i>MBE/WBE Certificate Type</i>	<i>Dollar value</i>	<i>Estimated % of total contract value</i>	<i>UNSPS Code # for work to be performed</i>	<i>Work to be performed</i>

Name _____ Title _____ Date _____

Attachment A (continued)
Letter Of Intent To Perform As A
Subcontractor/Joint Venture

This form is to be completed and submitted by the apparent successful participant by the end of the second business day following notice of intent to award.

Proposal for _____
(Name of Project)

Prime Contractor Name

The undersigned has agreed to perform work in connection with the above project as:

☐ a subcontractor ☐ a joint venture

Detailed description of work items to be performed:

At the following price(s): \$ _____

The total value of MWBE participation under this Subcontractor/Joint Venture Agreement is \$ _____; which is estimated to be _____% of the total Proposal.

Signature of Subcontractor/Joint Venturer

Printed Name: _____

Title: _____

Date: _____

The undersigned will enter into a written agreement with the above subcontractor for the work described upon award and execution of a contract with The Metropolitan Government.

Signature of Prime Contractor

Printed Name: _____

Title: _____

Date: _____

Attachment B
Affidavits

State of _____ **County of** _____

As used herein, "Offeror" will include bidders and proposers.

Compliance with Laws: After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the _____ (Title) of _____ (Offeror), and that Offeror is presently in compliance with, and will continue to maintain compliance with, all applicable laws. Thus, Affiant states that Offeror has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that Offeror is current on its payment of all applicable gross receipt taxes and personal property taxes.

Contingent Fees: In accordance with METRO's 1992 Procurement Code, it is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that the Offeror has not retained anyone in violation of the foregoing.

Nondiscrimination: Contractor, after being first duly sworn, affirms that by its employment policy, standards and practices it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, religion, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with handicaps and/or disabilities. It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, religion, national origin or handicap and/or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. With regard to all aspects of this contract, contractor certifies and warrants it will comply with this policy.

And Further Affiant Sayeth Not:

By: _____

Title: _____

Address: _____

Sworn to and subscribed before me on this ____ day of _____, 2010____.

Notary Public
My commission expires: _____

Attachments C

Guidelines for Assistance to Small Businesses

I. Assistance to Small Businesses as Prime or Subcontractor for Construction and/or Other Services

The Metropolitan Government of Nashville and Davidson County (Owner) has established guidelines, which provide incentives to maximize the participation of Small Businesses as Prime or Subcontractor for construction and/or other services.

II. Small Businesses as Prime or Subcontractor for Construction and/or Other Services

This section provides the definition of a Small Business as contained in the Metropolitan Procurement Code, and the additional criteria for Small Business status as set forth in the Regulations to the Metropolitan Procurement Code.

A Small Business satisfies all of the following criteria:

- (a) A United States business which is independently owned and operated, and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation;
- (b) Either has no more than the following number of employees or has no more than the following annual sales volume for the applicable industry; and

INDUSTRY	ANNUAL SALES VOLUME	MAXIMUM NUMBER OF EMPLOYEES*
Agriculture, Forestry, Fishing	\$500,000	9
Architectural/Design/Engineering	\$2,000,000	30
Construction	\$2,000,000	30
Educational	\$1,000,000	9
Finance, Insurance, Real Estate	\$1,000,000	9
Information Systems/Technology	\$2,000,000	30
Manufacturing	\$2,000,000	99
Marketing/Communications/Public Relations	\$2,000,000	30
Medical/Healthcare	\$2,000,000	30
Mining	\$1,000,000	49
Retail Trade	\$750,000	9
Service Industry	\$500,000	9
Transportation, Commerce, and Utilities	\$1,000,000	9
Wholesale Trade	\$1,000,000	19

- (c) Meets the following additional criteria:
1. Has demonstrated capability to perform independently a substantial portion of the contract they seek, or a substantial portion of the subcontract for which they are proposed by a bidder or offeror, as specified by the Purchasing Agent;
 2. Not share or jointly use office space, production, marketing and sales, business support systems, personnel, or equipment with any business not classified by Metro as a small business (i.e., a large business);
 3. Has existed as a legal business entity for a minimum of one year (twelve months of continuous business enterprise), performing independently and satisfactorily and achieving a minimum of \$35,000.00 sales income (collected sales dollars not simply booked sales);
 4. Not be owned, controlled, or directed by individuals or groups of individuals who own, control, or direct a large business involved in the same category of work as the business for which small business status is sought;
 5. If a supplier, be an authorized regular distributor with normal wholesale agreements for the Product or products to be supplied; and
 6. If a construction contractor, be licensed as required by the state to perform the work for which it has submitted a bid or has been proposed by a prime as a subcontractor.

*NOTE: Employee means a person (or persons) employed on a full-time (or full-time equivalent), a permanent basis. Full-time equivalent includes employees who work 30 hours per week or more. Full-time equivalent also includes the aggregate of employees who work less than 30 hours a week, where the work hours of such employees add up to at least a 40 hour work week.

The totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern. Temporary employees, independent contractors or leased employees are not employees for these purposes. The owner(s) are excluded from this classification.

SMALL BUSINESS STATUS

If Firms desire to claim the status as a small business, they must

- 1) Be registered to do business with Metro at <https://smartrac.nashville.gov/newvendorlogin.aspx> , and
- 2) Have been approved as a small business through the submission to Metro of documentation to confirm small business status including a copy of their two most recently submitted business tax returns as well as IRS form 941- Employer's Quarterly federal tax return.

This information will be reviewed Metro's BAO and used to confirm the small business status. Small business status must be approved by Metro **prior** to submission. ***While Metro commits to having documents reviewed and status granted as quickly as possible after the receipt of the necessary documentation, to be safe, documents should be submitted no later than four days before the proposal opening date to allow time for status to be granted.***

Attachments D
List of Proposed Small Businesses for RFP 10-08

Proposer Name: _____

Notice: Small businesses listed must be registered with Metro and small business status must be approved by Metro **prior** to proposal submission. Registration can be completed online at: <https://smartrac.nashville.gov/newvendorlogin.aspx>

	Small Business Name	Small Business Address, Phone Number and email address	Industry of Work to be Performed by this Small Business (see <i>Instructions below this table</i>)	Phase in project when Small Business is anticipated to perform work	Minimum Amount & <i>Percentage</i> of total contract dollars to be spent with this Small Business
1.					
2.					
3.					
4.					
5.					
6.					

INSTRUCTIONS:

- If the proposer is a small business, the proposer should also be included in this list.
- If more than six (6) Small Businesses are to be listed, please attach an additional sheet.
- For the "Industry of Work to be Performed by this Small Business" column, you must enter an Industry listed here: Agriculture, Architectural/Design/Engineering; Educational; Information Systems/Technology; Marketing/Communications/Public Relations; Medical/Healthcare; Forestry, Fishing; Mining; Construction; Manufacturing; Wholesale Trade; Retail Trade; Finance, Insurance, Real Estate; Transportation, Commerce, and Utilities; Service Industry

TOTAL _____

Submission of a proposal shall constitute Proposer's representation that neither Proposer nor an officer, agent or employee of Proposer, or the spouse, parent or child of an officer, agent or employee of Proposer, is involved in the ownership, operation or management of any subcontractor claiming status as a small business for purposes of this Proposal and Contract.

 Name and Title of Person submitting this form

Table 1 – Metro Government Monthly Rates

Coverage Tier	Basic ¹ 1/1/2010 - 12/31/2010		Enhanced ¹ 1/1/2010 - 12/31/2010	
	Single	Family	Single	Family
General Government Employee (12 month) - semi-monthly	\$1.55	\$4.74	\$2.12	\$6.79
General Government Employee (9 month) - semi-monthly	\$2.07	\$6.32	\$2.83	\$9.05
Public school (12 month) - bi-weekly	\$1.43	\$4.38	\$1.96	\$6.27
Public School (10 month) - bi-weekly	\$1.77	\$5.42	\$2.42	\$7.76
Pensioner (monthly)	\$3.10	\$9.48	\$4.24	\$13.58

¹ For employees paid bi-weekly (26 pay periods), premiums will be deducted from 24 pay periods

Table 2 – Metro Government Claims

Month	Single	Family	Total	Claims Payment
Jan-05	2267	2554	4821	39,172.84
Feb-05	2424	2796	5220	42,582.36
March-05	2481	2862	5343	43,605.22
April-05	2489	2874	5363	43,776.74
May-05	2512	2890	5402	44,070.80
June-05	2508	2878	5386	43,920.48
July-05	2529	2876	5405	44,020.86
August-05	2528	2860	5388	43,854.00
Sept-05	2537	2867	5404	43,977.02
Oct-05	2566	2904	5470	44,534.14
Nov-05	2548	2891	5439	44,336.44
Dec-05	2896	2212	5108	41,615.24
Jan-06	3275	3493	6768	46,965.43
Feb-06	3308	3507	6815	47,291.01
March-06	3332	3525	6857	45,759.21
April-06	3223	3328	6551	45,423.58
May-06	3265	3361	6626	45,956.84
June-06	3243	3338	6581	45,755.82
July-06	3265	3344	6609	45,905.84
August-06	3319	3489	6808	47,658.59
Sept-06	3333	3493	6826	47,773.38
Oct-06	3365	3521	6886	48,215.45
Nov-06	3448	3564	7012	49,025.58
Dec-06	3472	2581	6053	49,415.37
Jan-07	3382	3846	7228	53,752.77
Feb-07	3618	3856	7474	53,758.66

March-07	3646	3871	7517	54,045.60
April-07	3675	3880	7555	54,284.88
May-07	3670	3880	7550	54,336.08
June-07	3690	3905	7595	54,696.51
July-07	3671	3897	7568	54,559.44
August-07	3660	3895	7555	54,526.95
Sept-07	3688	3922	7610	54,983.72
Oct-07	3757	3943	7700	55,506.64
Nov-07	3820	3961	7781	55,953.13
Dec-07	3853	3985	7838	56,345.58
Jan-08	4462	4552	9014	66,777.32
Feb-08	4469	4566	9035	67,022.70
March-08	4495	4559	9054	67,061.57
April-08	4520	4590	9110	67,502.61
May-08	4528	4598	9126	67,662.86
June-08	4521	4577	9098	67,395.74
July-08	4521	4583	9104	67,474.49
August-08	4515	4586	9101	67,517.49
Sept-08	4503	4593	9096	67,597.36
Oct-08	4640	4636	9276	68,625.48
Nov-08	4688	4655	9343	69,031.48
Dec-08	4594	4536	9130	67,548.53
Jan-09	5022	5135	10157	81,258.28
Feb-09	4905	4871	9776	75,758.44
March-09	4917	4865	9782	71,750.40
April-09	4907	4857	9764	75,621.40
May-09	4903	4844	9747	75,473.38
June-09	4908	4832	9740	75,345.28

July-09	4859	4813	9672	74,944.70
August-09	4852	4816	9668	74,945.06
Sept-09	4820	4825	9645	74,964.50
Oct-09	4853	4851	9704	75,435.58
Nov-09	4885	4880	9765	75,888.56
Dec-09	4845	4824	9669	75,156.14
Jan-10	5022	5135	10157	81,258.28
Feb-10	5019	5139	10158	81,305.75



**CONTRACT BETWEEN
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND
FOR PURCHASE OF SERVICES**

This contract is initiated by and between **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY** ("METRO") and ("CONTRACTOR").
This contract consists of the following documents:

- ***This Contract Document,***
- ***Solicitation, Numbered*** ,
- ***CONTRACTOR's Response, and***
- ***Exhibits:***
 - ***Exhibit A, Pricing,***
 - ***Exhibit B, Escalation/De-escalation (if allowed),***
 - ***Exhibit C, ACH Form for Electronic Payment***
 - ***Exhibit D, Affidavits***
 - ***Exhibit E, Contractor Supplied Insurance Forms,***
 -

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- ***Any Properly Executed Contract Amendment*** (most recent with first priority),
- ***This Document and All Exhibits,***
- ***Solicitation, Numbered*** , and
- ***CONTRACTOR's Response***

The parties hereby agree to the following terms and conditions:

- I. Duties and Responsibilities of CONTRACTOR.*** CONTRACTOR agrees to provide and METRO agrees to purchase the following services:
- II. Reserved.***
- III. Term.***

- A. The term of this contract will begin on the date this contract is signed by all required parties and filed in the office of the Metropolitan Clerk. METRO contemplates that the contract term will begin on or about _____ (beginning date). The initial contract term will end sixty (60) months from the beginning date.
- B. This contract may be extended by contract amendment. The option to extend shall be exercised by and in the discretion of the Purchasing Agent. In no event shall the term of this contract, including extensions, exceed sixty (60) months from the date of filing with the Metropolitan Clerk's Office.

IV. Compensation. This contract has an estimated value of _____ over the life of the contract. The pricing details are demonstrated in **Exhibit A**. CONTRACTOR shall be paid as work is completed and METRO is accordingly invoiced based on the following schedule: (check if applicable)

- A. ☐ single payment following completion of contract,
- B. ☐ monthly as work is completed and approved by METRO,
- C. ☐ quarterly as work is completed and approved by METRO,
- D. ☐ as milestones are completed and approved by METRO,
- E. ☐ other (explain) _____

There will be no other charges or fees for the performance of this contract. METRO will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payment within 60 days. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.

V. Escalation/De-escalation. This contractor is eligible for annual escalation/de-escalation adjustments. If the contract is eligible, the request for adjustment must be submitted to the Purchasing Agent no less than sixty (60) days prior to the **annual anniversary** of the contract signing by the contractor. Any such adjustment shall become effective on the anniversary of the filing of the contract with the Metro Clerk's office. The amount of escalation is subject to the process identified in **Exhibit B**.

VI. Electronic Payment. Metro requires as a condition of this contract that the Contractor shall complete and sign Metro's form authorizing electronic payments to the Contractor. **Exhibit C**.

VII. Taxes. METRO shall not be responsible for any taxes that are imposed on CONTRACTOR. Furthermore, CONTRACTOR understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

VIII. Reserved.

IX. Reserved.

X. Reserved.

XI. Copyright, Trademark, Service Mark, or Patent Infringement.

- A. CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. CONTRACTOR shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.
- B. If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR may at its option and expense:
1. Procure for METRO the right to continue using the products or services.
 2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing.
 3. Remove the products or discontinue the services and cancel any future charges pertaining thereto.
 4. Provided, however, that CONTRACTOR will not exercise option b.3. until CONTRACTOR and METRO have determined that options b.1. and b.2. are impractical.
- C. CONTRACTOR shall have no liability to METRO, however, if any such infringement or claim thereof is based upon or arises out of:

1. The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR.
2. The use of the products or services in a manner for which the products or services were neither designated nor contemplated.
3. The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

XII. Termination

- A. *Breach.* Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, METRO shall have the right to immediately terminate the contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.
- B. *Lack of Funding.* Should funding for this contract be discontinued, METRO shall have the right to terminate the contract immediately upon written notice to CONTRACTOR.
- C. *Notice by Metro.* METRO may terminate this contract at any time upon thirty (30) days written notice to CONTRACTOR.

XIII. Maintenance of Records. CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

XIV. Monitoring. The CONTRACTOR's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

XV. METRO Property. Any METRO property, including but not limited to books, records and equipment that is in CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of the contract. All

goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be METRO property.

XVI. Modification of Contract. This contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

XVII. Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

XVIII. Waiver. No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

XIX. Employment.

- A. CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
- B. CONTRACTOR shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this contract.
- C. Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

XX. Procurement Nondiscrimination Program Requirements

- A. The consideration and contact of minority-owned and/or woman-owned business enterprises (MWBE) was required for a *Responsive* offer.
- B. The provision of the following items was a part of the proposal package. The forms for compliance with the Procurement Nondiscrimination Program are made a part of this contract by reference.

- 1. *Covenant of Nondiscrimination*

Your firm has committed to the Covenant of Nondiscrimination when registering with Metro to do business. To review this document, go to Nashville.gov and visit the Procurement or Business Assistance web pages (it is NOT necessary to resubmit this with each proposal/contract.

2. *Statement of Interested, Notified, Bid Amount, and Successful MWBEs Selected.*

Each proposer must provide the enclosed form indicating that the proposer has delivered written notice to at least three (3) available MWBEs if use of MWBEs is reasonable and if BAO can provide at least three MWBEs for the applicable category. The interested, notified, successful and unsuccessful bid prices are one of the several required responses on the form.

3. *Letter of Intent to Perform as a Subcontractor/Joint Venture.*

In the event that a proposer submits the use subcontractors, suppliers and/or joint ventures, a letter of intent signed by both the subcontractor/supplier/joint venturer must be submitted to Procurement by the end of the second business day following issuance of the intent to award letter.

4. *Registration and Certification.*

To be considered for the purpose of being Responsive, the subcontractor, supplier and/or joint venturer must be registered online with Metro by the proposal due date. Certification is required by the filing date of the contract with the Metro Clerk's Office.

XXI. Compliance with Laws. CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations. **Exhibit D.**

XXII. Contingent Fees. CONTRACTOR hereby represents that CONTRACTOR has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts. **Exhibit D.**

XXIII. Nondiscrimination. It is the policy of the METRO not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, CONTRACTOR certifies and warrants it will comply with this policy. No person

shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. Accordingly, all Proposers entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination. **Exhibit D.**

XXIV. Ethical Standards. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

XXV. Insurance. During the term of this Contract, CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof the types and amounts of insurance identified (**Exhibit F**) below by a checked box and in the solicitation:

- A. ☐ Products Liability Insurance in the amount of one million (\$1,000,000.00) dollars (If the vendor will be shipping to a receiving department of METRO)
- B. ☐ General Liability Insurance in the amount of one million (\$1,000,000.00) dollars
- C. ☐ Professional Liability Insurance in the amount of one million (\$1,000,000.00) dollars

- D. ☒ Automobile Liability Insurance in the amount one million (\$1,000,000.00) dollars (if vendor will be making on-site deliveries)
- E. ☒ Worker's Compensation Insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee. (Not required for companies with fewer than five (5) employees.)
- F. ☐ Other Insurance ...
- G. Such insurance shall:
1. Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.
 2. For any claims related to this agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects METRO, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.
 3. Automotive Liability Insurance including vehicles owned, hired, and non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.
 4. Worker's Compensation (If applicable), CONTRACTOR shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance. CONTRACTOR shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by CONTRACTOR's workers' compensation insurance coverage.

5. *Other Insurance Requirements.* CONTRACTOR shall:

- a. Prior to commencement of services, furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

**DEPARTMENT OF LAW
INSURANCE AND RISK MANAGEMENT
METRO COURTHOUSE
1 PUBLIC SQUARE, SUITE 108
NASHVILLE, TENNESSEE 37201**

- b. Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.
- c. Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.
- d. Maintain such insurance from the time services commence until services are completed and attach the certificates of insurance in the METRO system. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by METRO as a material breach of lease.
- e. Place such insurance with insurer licensed to do business in Tennessee and having A.M.Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.
- f. Require all subcontractors to maintain during the term of the agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by CONTRACTOR's insurance) in the same manner as specified for CONTRACTOR. CONTRACTOR shall file subcontractor's certificates of insurance in METRO's system.
- g. Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO prior to the commencement of services.
- h. If the CONTRACTOR has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

XXVI. Indemnification and Hold Harmless. CONTRACTOR will indemnify and hold harmless METRO, its officers, agents and employees from:

- A. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and,
- B. Any claims, damages, penalties, costs and attorney fees arising from any failure of CONTRACTOR, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. METRO will not indemnify, defend or hold harmless in any fashion the CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that the CONTRACTOR may provide.
- D. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

XXVII. Attorney Fees. CONTRACTOR agrees that in the event either party takes legal action to enforce any provision of the contract or to obtain a remedy for any breach of this contract, and in the event METRO prevails in such action, CONTRACTOR shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

XXVIII. Assignment--Consent Required. The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this contract, neither this contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

**METRO'S CHIEF ACCOUNTANT
DIVISION OF ACCOUNTS
DEPARTMENT OF FINANCE
222 THIRD AVENUE NORTH, SUITE 750
NASHVILLE, TENNESSEE 37201**

- XXIX. Entire Contract.** This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
- XXX. Force Majeure.** No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
- XXXI. Governing Law.** The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the CONTRACTOR may provide.
- XXXII. Venue.** Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.
- XXXIII. Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

XXXIV. Notices and Designation of Agent for Service of Process.

A. All notices to METRO shall be mailed or hand delivered to:

Department: Division of Purchases
Att'n: Jeff L. Gossage
Addr: 222 Third Avenue, North
Suite 601
Nashville, Tennessee 37201

B. Notices to CONTRACTOR shall be mailed or hand delivered to:

CONTRACTOR:

Att'n:

Addr:

Telephone:

Fax:

E-mail:

C. CONTRACTOR designates the following as the CONTRACTOR's agent for service of process and will waive any objection to service of process if process is served upon this agent:

Designated Agent:

Att'n:

Addr: \

XXXV. HIPPA BUSINESS ASSOCIATE AGREEMENT

SECTION 1 - DEFINITIONS

- a. **Individual.** "Individual" shall have the same meaning as set forth in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- b. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- c. **HIPAA Security Regulations.** "HIPAA Security Regulations" shall mean the Standards for Security of Individually Identifiable Health Information at 45 CFR part 160 and subparts A and C of part 164.
- d. **HITECH Standards.** "HITECH Standards" means the privacy, security and security Breach notification provisions under the Health Information Technology Act of 2009, as incorporated in the American Recovery and Reinvestment Act of 2009 ("HITECH Act"), and any regulations promulgated thereunder.
- e. **Protected Health Information.** "Protected Health Information" or "PHI" shall have the same meaning as set forth in 45 CFR § 160.103.
- f. **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- g. **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- h. **Catch-all definition.** Terms used but not otherwise defined in this Agreement shall have the same meaning as the meaning ascribed to those terms in the Health Information Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology Act of 2009, as incorporated in the American Recovery and Reinvestment Act of 2009 ("HITECH Act"), implementing regulations at 45 Code of Federal Regulations Parts 160-164 and any other current and future regulations promulgated under HIPAA or the HITECH Act.

SECTION 2 - OBLIGATIONS AND ACTIVITIES OF CONTRACTOR

- a. **Permitted Uses of Protected Health Information.** Contractor shall not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law. Contractor may: 1) use and disclose PHI to perform its obligations under its contract with Metro; (2) use PHI for the proper management and administration of Contractor; and (3) disclose PHI for the

proper management and administration of Contractor, if such disclosure is required by law or if Contractor obtains reasonable assurances from the recipient that the recipient will keep the PHI confidential, use or further disclose the PHI only as required by law or for the purpose for which it was disclosed to the recipient, and notify Contractor immediately of any instances of which it is aware in which the confidentiality of the PHI has been breached.

- b. **Safeguards.** Contractor shall use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement. Contractor shall develop and implement policies and procedures that comply with the Privacy Rule, HIPAA Security Regulations, and the HITECH Act.
- c. **Mitigation.** Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. **Notice of Use or Disclosure, Security Incident or Breach.** Contractor shall notify Metro of any use or disclosure of PHI by Contractor not permitted by this Agreement, any Security Incident (as defined in 45 C.F.R. section 164.304) involving Electronic PHI, and any Breach of Protected Health Information within five (5) business days.
 - (i) Contractor shall provide the following information to Metro within ten (10) business days of discovery of a Breach except when despite all reasonable efforts by Contractor to obtain the information required, circumstances beyond the control of the Contractor necessitate additional time. Under such circumstances, Contractor shall provide to Metro the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) calendar days from the date of discovery of a Breach:
 - (1) the date of the Breach;
 - (2) the date of the discovery of the Breach;
 - (3) a description of the types of PHI that were involved;
 - (4) identification of each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed; and
 - (5) any other details necessary to complete an assessment of the risk of harm to the Individual.
 - (ii) Contractor shall cooperate with Metro in investigating the breach and in meeting Metro's notification obligations under the HITECH Act and any other security breach notification laws.
 - (iii) Contractor agrees to pay actual costs for notification and any associated mitigation costs incurred by Metro, such as credit monitoring, if Metro

determines that the Breach is significant enough to warrant such measures.

- (iv) Contractor agrees to establish procedures to investigate the Breach, mitigate losses, and protect against any future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Metro in the time and manner reasonably requested by Metro.
 - (v) Contractor shall report to Metro any successful: (1) unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information; and (2) interference with Contractor's information systems operations, of which Contractor becomes aware.
- e. **Compliance of Agents.** Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of Metro, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. **Access.** Contractor agrees to provide access, at the request of Metro, and in the time and manner designated by Metro, to Protected Health Information in a Designated Record Set, to Metro or, as directed by Metro, to an Individual, so that Metro may meet its access obligations under 45 CFR § 164.524, HIPAA and the HITECH Act.
- g. **Amendments.** Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Metro directs or agrees at the request of Metro or an Individual, and in the time and manner designated by Metro, so that Metro may meet its amendment obligations under 45 CFR § 164.526, HIPAA and the HITECH Act.
- h. **Disclosure of Practices, Books, and Records.** Contractor shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, Metro available to Metro, or at the request of Metro to the Secretary, in a time and manner designated by Metro or the Secretary, for purposes of determining Metro's compliance with the HIPAA Privacy Regulations.
- i. **Accounting.** Contractor shall provide documentation regarding any disclosures by Contractor that would have to be included in an accounting of disclosures to an Individual under 45 CFR § 164.528 (including without limitation a disclosure permitted under 45 CFR § 164.512) and under the HITECH Act. Contractor shall make the disclosure Information available to Metro within thirty (30) days of Metro's request for such disclosure Information to comply with an individual's request for disclosure accounting. If Contractor is contacted directly by an

individual based on information provided to the individual by Metro and as required by HIPAA, the HITECH Act or any accompanying regulations, Contractor shall make such disclosure Information available directly to the individual.

- j. **Security of Electronic Protected Health Information.** Contractor agrees to: (1) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Metro; (2) ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it; and (3) report to Metro any security incident of which it becomes aware.
- k. **Minimum Necessary.** Contractor agrees to limit its uses and disclosures of, and requests for, PHI: (a) when practical, to the information making up a Limited Data Set; and (b) in all other cases subject to the requirements of 45 CFR 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.
- l. **Compliance with HITECH Standards.** Contractor shall comply with the HITECH Standards as specified by law.
- m. **Compliance with Electronic Transactions and Code Set Standards:** If Contractor conducts any Standard Transaction for, or on behalf, of Metro, Contractor shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the Code of Federal Regulations. Contractor shall not enter into, or permit its subcontractors or agents to enter into, any Agreement in connection with the conduct of Standard Transactions for or on behalf of Metro that:
 - (i) Changes the definition, Health Information condition, or use of a Health Information element or segment in a Standard;
 - (ii) Adds any Health Information elements or segments to the maximum defined Health Information Set;
 - (iii) Uses any code or Health Information elements that are either marked “not used” in the Standard’s Implementation Specification(s) or are not in the Standard’s Implementation Specifications(s); or
 - (iv) Changes the meaning or intent of the Standard’s Implementations Specification(s).
- n. **Indemnity.** Contractor shall indemnify and hold harmless Metro, its officers, agents and employees from and against any claim, cause of action, liability, damage, cost or expense, including attorneys’ fees, arising out of or in connection with any non-permitted use or disclosure of Protected Health Information or other breach of this Agreement by Contractor or any subcontractor or agent of Contractor.

SECTION 3 - OBLIGATIONS OF METRO

- a. Metro shall notify Contractor of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Contractor's use or disclosure of Protected Health Information.
- c. Metro shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that Metro has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

SECTION 4 – TERM, TERMINATION AND RETURN OF PHI

- a. **Term.** The Term of this Agreement shall be effective as of _____ and shall terminate when all of the Protected Health Information provided by Metro to Contractor, or created or received by Contractor on behalf of Metro, is destroyed or returned to Metro, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.
- b. **Termination for Cause.** Upon Metro's knowledge of a material breach by Contractor, Metro shall provide an opportunity for Contractor to cure the breach or end the violation. Metro may terminate this Agreement between Metro and Contractor if Contractor does not cure the breach or end the violation within the time specified by Metro. In addition, Metro may immediately terminate this Agreement if Contractor has breached a material term of this Agreement and cure is not feasible.
- c. **Obligations on Termination.**
 - (i) Except as provided in subsection (ii), upon termination of this Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from Metro, or created or received by Contractor on behalf of Metro. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information. Contractor shall complete such return or destruction as promptly as possible, but no later than sixty (60) days following the termination or other conclusion of this Agreement. Within such sixty (60) day period, Contractor shall certify on oath in writing to Metro that such return or destruction has been completed.
 - (ii) In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to Metro notification of the conditions that make return or destruction

infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information. If Metro does not agree that return or destruction of Protected Health Information is infeasible, subparagraph (i) shall apply. Contractor shall complete these obligations as promptly as possible, but no later than sixty (60) days following the termination or other conclusion of this Agreement.

Section 5 - Miscellaneous

- a. **Regulatory References.** A reference in this Agreement to a section in HIPAA or the HITECH Act means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Metro to comply with the requirements of HIPAA or the HITECH Act and any applicable regulations in regard to such laws.
- c. **Survival.** The respective rights and obligations of Contractor shall survive the termination of this Agreement.
- d. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Metro to comply with HIPAA or the HITECH Act or any applicable regulations in regard to such laws.

XXXVI. Effective Date. This contract shall not be binding upon the parties until it has been signed first by the CONTRACTOR and then by the authorized representatives of the Metropolitan Government and has been filed in the office of the Metropolitan Clerk.

**THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY**

APPROVED AS TO PROJECT SCOPE:

Department Head

**APPROVED AS TO COMPLIANCE WITH
PROCUREMENT CODE:**

Purchasing Agent

**APPROVED AS TO AVAILABILITY
OF FUNDS:**

Director of Finance

**APPROVED AS TO PROOF OF
INSURANCE:**

Risk Manager

**APPROVED AS TO FORM AND
LEGALITY:**

Metropolitan Attorney

**FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:**

Date:

CONTRACTOR

Company: _____

BY: _____

Print: _____

Title: _____

Sworn to and subscribed to before me, a
Notary Public, this _____
day of _____, 2010 __ ,
by _____ ,
the _____ of
CONTRACTOR and duly authorized to
execute this instrument on Contractor's
behalf.

Notary Public

My Commission Expires _____

Exhibit A

Pricing

The pricing model for this contract is as follows:

Exhibit B

Escalation/De-escalation

This Exhibit shall set forth the method of calculation, if permitted by the contract, for price adjustments in subsequent contract periods.

Exhibit C

ACH Form for Electronic Payment

This Exhibit must be completed by the CONTRACTOR to facilitate payment of services.

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
DEPARTMENT OF FINANCE
TREASURY DIVISION
ACH (AUTOMATED CLEARING HOUSE) CREDITS**

Company Name: _____
Federal Identification Number or Social Security Number (under which you are doing business with Metro) I (We) hereby authorize the Treasurer of the Metropolitan Government of Nashville and Davidson County, hereafter called METRO TREASURER, to initiate credit entries to my (our) (*select type of account*) ☐ CHECKING or ☐ SAVINGS account indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

This authority is to remain in full force and effect until METRO TREASURER has received written notification from me (or either of us) of its termination in such time and in such manner as to afford METRO TREASURER and DEPOSITORY a reasonable opportunity to act on it.
.....

Many banking institutions use different numbers for ACH. Please call your bank for verification of ACH transit and account number.

Bank Official contacted: _____ Phone _____
.....

DEPOSITORY/BANK NAME _____ BRANCH _____

CITY _____ STATE _____

ACH TRANSIT/ABA NO. _____ ACCOUNT NO. _____

NAME(S) _____

(Please print names of authorized account signatory)

SIGNED _____ DATE _____

SIGNED _____ DATE _____

Phone _____

Please mail to:
Finance - Division of Accts
Attn: Starla Friedmann
222 3rd Ave N Ste 750
Nashville, TN 37201

or Fax to: 615-862-6109
Attn: Starla Friedmann

Exhibit D
Affidavits

State of _____ **County of** _____

As used herein, "Offeror" will include bidders and proposers.

Compliance with Laws: After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the _____ (Title) of _____ (Offeror), and that Offeror is presently in compliance with, and will continue to maintain compliance with, all applicable laws. Thus, Affiant states that Offeror has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that Offeror is current on its payment of all applicable gross receipt taxes and personal property taxes.

Contingent Fees: In accordance with METRO's 1992 Procurement Code, it is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that the Offeror has not retained anyone in violation of the foregoing.

Nondiscrimination: Contractor, after being first duly sworn, affirms that by its employment policy, standards and practices it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, religion, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with handicaps and/or disabilities. It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, religion, national origin or handicap and/or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. With regard to all aspects of this contract, contractor certifies and warrants it will comply with this policy.

And Further Affiant Sayeth Not:

By: _____

Title: _____

Address: _____

Sworn to and subscribed before me on this ____ day of _____, 2010 ____.

Notary Public

My commission expires: _____

Exhibit E

Insurance Forms

This Exhibit shall house the proof of insurance in the amounts and form set required by the contract.